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No. 00-260

Supreme Court, U.S.
FILED
NOV 9 2000
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IN THE

Supreme Court of the United States

AIR LINE PILOTS ASSOCIATION, INTERNATIONAL,
Petitioner,

v.

NORTHWEST AIRLINES, INC.,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

PETITIONER'S REPLY BRIEF

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Petitioner Air Line Pilots Association wishes to reply briefly to Respondent's argument that the first issue presented in the petition for certiorari was not raised or decided below. We believe the other matters discussed in Respondent's brief in opposition have been adequately addressed in the petition and require no further comment here.

The issues that were presented to and considered by the court of appeals were succinctly described in the court's opinion as follows:

> Is the arbitration of statutory discrimination claims a mandatory subject of bargaining? Northwest says not . . . , reasoning as follows. Under *Alexander v. Gardner-Denver Co.*, [citation omitted], a union cannot waive the right of the employees it represents to bring a statutory discrimination claim in a judicial forum. Because ALPA

> cannot agree to such a provision, it cannot be a mandatory subject of collective bargaining. . . .
>
> For its part, ALPA urges that the arbitration of statutory claims is a mandatory subject, . . . for three independent but related reasons. **First, *Gilmer v. Interstate/Johnson Lane Corp.*, [citation omitted] "effectively supersedes" *Gardner-Denver*. If, as ALPA reads *Gilmer*, a union may in collective bargaining waive the employees' right to a judicial forum for a statutory discrimination claim, then there is no reason to doubt that the arbitration of statutory claims is a mandatory subject of bargaining.** Second, even if *Gardner-Denver* is still good law, it has no effect upon whether arbitration of statutory claims is a mandatory subject of bargaining. In other words, as the district court held, Northwest must bargain with ALPA over the Arbitration Clause regardless whether ALPA could lawfully agree to it because it is directly related to "rates of pay, rules, or working conditions." Third, even if waiver of the right to a judicial forum is not a mandatory subject of bargaining because ALPA cannot agree to such a waiver under *Gardner-Denver*, the procedural rules for arbitration, as specified in the Arbitration Clause, are mandatory subjects of bargaining.

(Pet. App. 7a-8a, emphasis added).

The portion of the above excerpt that we have highlighted makes clear that the first issue raised in the petition for certiorari was presented to and considered by the court of appeals. Moreover, later in its opinion the court devoted several paragraphs to discussing that issue, ultimately concluding that *Gilmer* did not "supersede" *Gardner-Denver*, but rather that the two cases could be reconciled. (Pet. App. 12a-14a). The court saw "a clear rule of law emerging from *Gardner-Denver* and *Gilmer*: Unless the Congress has

precluded his doing so, an individual may prospectively waive his own statutory right to a judicial forum, but his union may not prospectively waive that right for him." (*Id.* at 13a). The issue raised by the first question presented in the petition for certiorari is simply whether this conclusion of the court of appeals is correct, or whether, if "an individual may prospectively waive his own statutory right to a judicial forum," a union may also do so through collective bargaining on behalf of the employees it represents.

To be sure, ALPA also argued that even if *Gardner-Denver* precludes a union from entering into an agreement that requires employees to submit statutory discrimination claims to arbitration, an employer must nevertheless bargain with a union before requesting or requiring individual union-represented employees to sign such an agreement as a condition of their employment. This is the second issue raised in the petition for certiorari. Respondent, relying on selected quotations from ALPA's brief and petition for rehearing in the court of appeals, now claims that this second issue was the only issue raised below. But as the court of appeals' opinion makes clear, both issues were argued and both were decided.

Respectfully submitted,

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